

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JOSEPH EAREGOOD,

Defendant-Appellant.

UNPUBLISHED

May 22, 2007

No. 269300

Genesee Circuit Court

LC No. 90-042725-FC

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant was originally convicted of unlawfully driving away an automobile (UDAA), MCL 750.413, in May 1990, following a jury trial, and was sentenced to three years' probation. In June 1990, the trial court issued a bench warrant charging defendant with violating his probation by going AWOL from an in-residence treatment program. In November 2005, defendant pleaded guilty to the probation violation charge and was sentenced to an additional three years of probation, with the first 180 days to be served in jail. In January 2006, defendant was again charged with violating a probationary condition that he not violate any criminal law. After defendant pleaded guilty to the charge, the trial court revoked his probation and sentenced defendant to two to five years' imprisonment, with credit for 188 days served. Defendant now appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant raises a number of challenges to his plea and sentence that were not raised at the plea hearing or at sentencing, or in a motion to withdraw the plea. Therefore, these issues are unpreserved, and our review is limited to plain error affecting defendant's substantial rights. See *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

We reject defendant's claim that the trial court lost jurisdiction pursuant to MCL 771.5 because he was not "convicted" of any probation violation before the expiration of his initial three-year probationary term imposed in 1990 and before five years had elapsed since 1990, which represented the maximum probationary period that could have been ordered.

A trial court is not precluded from extending probation for a felony after the initial probationary term expires, so long as it does not exceed the maximum statutory term of five

years prescribed in MCL 771.2(1). See MCL 771.5(1); *People v Marks*, 340 Mich 495, 498-499; 65 NW2d 698 (1954). Further, a probationary term is tolled during the time a defendant absconds from probation. *People v Ritter*, 186 Mich App 701, 711; 464 NW2d 919 (1991). The *Ritter* panel agreed with federal precedent on the matter, noting that “the period of probation ceases to run from the time a warrant is issued until the time the defendant is returned to the court’s supervision.” *Id.* This Court concluded that the defendant’s probationary period was tolled from the date that a bench warrant was issued and the date that he was subsequently arrested. *Id.* at 711-712. Here, the record discloses that defendant went AWOL from a treatment program and subsequently used a false name to avoid detection. The trial court found that defendant absconded while on probation. Under the circumstances, the trial court had jurisdiction to extend defendant’s probationary term in 2005 without violating the five-year limit.

Furthermore, “Michigan courts have traditionally held that the sentencing court retains jurisdiction to revoke a defendant’s probation if probation revocation proceedings are commenced within the probation period and are pending when it expires.” *Ritter, supra* at 706. Contrary to defendant’s argument on appeal, a probation revocation proceeding was pending against him, inasmuch as the trial court issued a bench warrant for defendant in June 1990. *Id.* at 706-708. Although a lack of due diligence in executing the warrant can result in a waiver of the probation violation, *People v Ortman*, 209 Mich App 251, 254; 530 NW2d 161 (1995); *People v Diamond*, 59 Mich App 581, 586-588; 229 NW2d 857 (1975), defendant does not raise any due diligence argument, so we decline to consider this issue further. *Ritter, supra* at 709; see also *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004) (“appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue”). Limiting our review to defendant’s jurisdictional argument based on MCL 771.5, defendant has not demonstrated any error, plain or otherwise, with respect to the trial court’s jurisdiction and authority to enter the 2005 order of probation, to then later revoke probation, and to subsequently impose the prison sentence.

Having concluded that defendant has failed to demonstrate any statutory error, we also reject defendant’s claim of a double jeopardy violation. Defendant was not improperly subjected to multiple punishments for the UDAA conviction. *People v Calloway*, 469 Mich 448, 450-451; 671 NW2d 733 (2003); *People v Denio*, 454 Mich 691, 706-707; 564 NW2d 13 (1997).

With respect to defendant’s challenge to the factual basis of his plea to the second probation violation, the record discloses that defendant was charged with violating a probation condition that he not violate any criminal law. MCR 6.445(F)(4) requires that a court “establish factual support for a finding that the probationer is guilty of the alleged violation.” Defendant’s admission that he was convicted of jail escape in a different case clearly satisfied the court rule.

Finally, we find no merit in defendant’s claim that the consecutive penalty provision for a jail escape committed by a person lawfully imprisoned for a felony, MCL 750.195(2), deprived the trial court of authority to impose the prison sentence. Although the jail escape formed the basis of the second probation violation, defendant’s sentence relates to the original UDAA conviction. MCL 771.4; *People v Burks*, 220 Mich App 253, 258; 559 NW2d 357 (1996). Defendant’s argument finds no support in the language of MCL 750.195(2). Defendant’s jail time was not a separate sentence for the UDAA conviction, but rather a valid probationary

condition for which defendant was entitled to credit against his prison sentence. MCL 771.3(2)(a).

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff